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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,837	02/09/2004	George W. Bagby	BA56-018	1652
21567	7590	03/10/2005	EXAMINER	
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201			GHERBI, SUZETTE JAIME J	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SN

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/775,837	BAGBY, GEORGE W.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Suzette J Gherbi	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 December 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 29-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 29-48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. Applicant's amendment dated 12/8/04 has been received in application serial number 10/775,837.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 29-48 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular with regards to claim 29 there is no mention in the specification for “..the tubular body without any inclination angle between the tab and a circumferential line about the outer surface”; with regards to claim 36 there is not mention in the specification for “a dart...the dart extending from one of the inner surface and outer surface”; and with regards to claim 45 there is not support in the specification for “...configured without pitch relative to a circumferential line”.

***Specification***

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the tubular body without any inclination angle between the tab and a circumferential line about the outer surface"; with regards to claim 36 there is not mention in the specification for "a dart...the dart extending from one of the inner surface and outer surface"; and with regards to claim 45 there is not support in the specification for "...configured without pitch relative to a circumferential line". However, as noted above introduction of these terms would be new matter.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 29-35 and 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brantigan EP 0307241. Brantigan discloses the invention as best understood noting figures 8 comprising: A bone joining implant (32) with a tubular body;

an open leading end and a central aperture; wherein the central aperture is similarly sized to the opening leading end (54); the leading end communicating with the central aperture and *capable of entrapping a living bone projection from each of a pair of adjacent bone bodies being joining together*; a plurality of discrete retaining tabs /ribs/prongs/barbs (32b see col. 8,lines 35-41); and as best interpreted the ribs/tabs configured relative the outer surface of the tubular body without any inclination angle between the tab and the circumferential line about he outer surface. However, Brantigan does not use the term "tabs" or the functional language of entrapping bone projections from each of a pair of adjacent bone bodies. It would have been obvious to one having ordinary skill in the art at the time the invention was made that (a) once the implant of Brantiganis implanted that the adjacent vertebrae bones would and are capable of entrapping bone debris especially loose material from made from the tools and (b) it is also obvious that the ribs (32) could be called "tabs" and is deemed a design consideration because they serve the same purpose which is to *retain* the implant between the adjacent bone bodies.

7. Claims 36-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson 5,015,247. Michelson discloses the invention as claimed comprising: A bone joining implant (50) with a tubular body; an open leading end and a central aperture; wherein the central aperture is similarly sized to the opening leading end (54); the leading end communicating with the central aperture (see figure 4c) however, Michelson does not specify the term "dart" or the functional language of entrapping

bone projections from each of a pair of adjacent bone bodies. As best understood of the non-disclosed term "dart", it would have been obvious to one having ordinary skill in the art at the time the invention was made that the threads (53) could be called "darts" which extend from one of the inner surfaces and outer surfaces and is deemed a design consideration because they serve the same purpose which is to *retain* the implant between the adjacent bone bodies.

### ***Response to Arguments***

8. Applicant's arguments filed 12/8/04 have been fully considered but they are not persuasive. Applicant has amended the claims and added addition new claims 30-48. The subject matter that applicant currently claims is not disclosed in the specification. While applicant's *remarks* (as described on page 27 of applicants specification) are descriptive of slope, pitch and inclination angel relative to the circumferential outer surfaces, none of these features are described in the specification. Applicant remarks about figures 12-17 but these drawings are inconclusive with regards to slope, pitch and angle (see MPRP 2125 and 2121.04). It is suggested to the applicant to use terminology that is described in the specification i.e. page 27 lines 4-12. Therefore as best understood the rejection above is deemed proper.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.

12. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

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13. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Suzette J-J Gherbi

04 March 2005